UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

PTH

Opposition No. 99,568

The Dial Corporation and Church & Dwight Corporation, joined as a party defendant[1]

v.

Bon Bril S.A.

Before Seeherman, Hairston and Walters, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An intent-to-use application has been filed by Bon Bril S.A. to register the mark BON BRIL for "instruments and materials for cleaning, namely sponges for household purposes; steel wool and steel wool pads for cleaning; cloths for cleaning; and household gloves for general use.[2]

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[1] Opposer's motion to substitute, which applicant has not contested, is granted to the extent that Church & Dwight Company is hereby joined as a party defendant. It is the Board's practice to join rather than substitute a party when the discovery and testimony periods are still open. See TMBP §512.01. The transfer of interest from The Dial Corporation to Church & Dwight Company is recorded in the Assignment Branch at Reel 1631, Frame 664.

[2] Serial No. 74/596,506 filed November 1994. The application contains the following translation: "The term 'bon bril' means good shine in the Spanish language."

In an amended notice of opposition[3], The Dial Corporation alleges priority of use and likelihood of confusion under Section 2(d) of the Trademark Act as grounds for opposition. Opposer claims ownership of the following registered marks: BRILLO for "soaps, cleaning, scouring and polishing wads, pads, rolls, and cloths of abradant nature, and abrasive and polishing material for removing foreign matter from metal and other surfaces;"[4] BRILLO for "abrasive pads for polishing and cleaning floors;"[5] BRILLO and design for "abrasive pads for polishing and cleaning floors;"[6] BRILLO for "spray and wipe surface cleaner for household use;"[7] BRILLO for "steel wool and scouring pads;"[8] and BRILLO SCRUBBERS for "adhesive pads and sponges for household purposes."[9]

Applicant, in its answer, has denied the salient allegations of the notice of opposition.

This case now comes up on opposer's motion for summary judgment. In support thereof, opposer has submitted the

[3] Opposer's motion to amend the notice of opposition is noted. Inasmuch as applicant consents thereto, the motion is granted and the amended notice of opposition is made of record.
[4] Registration No. 141,498 issued April 26, 1921;
[5] Registration No. 371,687 issued October 3, 1939;
[6] Registration No. 736,958 issued September 4, 1962;
[7] Registration No. 866,593 issued March 11, 1969;
[8] Registration No. 1,919,797 issued September 19, 1995.
[9] Registration No. 1,905,017 issued July 11, 1995.

affidavit of Steven Childs, Senior Brand Manager for the BRILLO brand; certified copies of opposer's pleaded registrations; sample advertisements for opposer's products; and an excerpt from a study which was prepared for opposer concerning scouring/scrubbing pad awareness, attitude and usage. Opposer contends that it and its predecessors have continuously used the BRILLO mark since 1913; that the BRILLO mark is famous as a result of extensive promotion and sales of BRILLO products; and that opposer's study reveals an unaided brand awareness of the BRILLO trademark in excess of 75% and a total brand awareness in excess of 95%. Further, opposer maintains that the parties' marks are similar in sound and appearance due to the shared presence of the term "BRIL," and that the parties' goods are essentially identical. Thus, opposer argues that there is a likelihood of confusion as a matter of law.

In response to opposer's motion for summary judgment, applicant argues, inter alia, that there are genuine issues of material fact as to the similarity/dissimilarity of the parties' marks; the extent of third-party uses of marks wich include the term "BRIL;" and the fame of opposer's mark. With respect to the alleged fame of opposer's mark, applicant argues that opposer's study is "unexplained" inasmuch as opposer submitted only a single page from the study and there has been no opportunity for

cross-examination. In support of its position, applicant submitted the declaration of Kurt Rosenbaum, a company consultant; copies of four third-party registrations for marks which include the term "BRIL" for cleaning preparations; and a study which was prepared for applicant concerning whether there is a likelihood of confusion between the parties' marks.

A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to judgment as a matter of law. See FRCP 56(c) and Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986). Moreover, the evidence of record and any inferences which may be drawn from the underlying disputed facts must be viewed in the light most favorable to the nonmoving party. Olde Tyme Foods Inc. v. Roundy's Inc., 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992). In determining whether summary judgment is appropriate, the Board may not resolve issues of fact; it may only determine whether such issues are present.

When the evidence of record is viewed in this light, we cannot say that opposer is entitled to summary judgment in its favor. At a minimum, there are genuine issues of material fact as to the fame of opposer's mark, the commercial impressions created by the parties' marks, and

the nature and extent of third-party use of marks which include the term BRIL for cleaning preparations.

Opposer's motion for summary judgment is accordingly denied. Under the circumstances, applicant's motion under Fed. R. Civ. P. 56(f) is considered moot.

Applicant's revocation of power of attorney and appointment of new attorneys and domestic representative, filed January 8, 1999, is noted and made of record.

Trial dates, commencing with the period for discovery, are reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	August 16, 1999
Testimony period for party in position of plaintiff to close: (opening thirty days prior thereto)	November 14, 1999
Testimony period for party in position of defendant to close: (opening thirty days prior thereto)	January 13, 2000
Rebuttal testimony period to close (opening fifteen days prior thereto)	February 27, 2000

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.l25.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.l29.

E. J. Seeherman

P. T. Hairston

C. E. Walters
Administrative Trademark Judges
Trademark Trial and Appeal Board